

# EXHIBIT A

**DAVID WOLFSON - July 06, 2023**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION

IN RE:	§	CASE NO. 22-60559
	§	
DONALD VINCENT KEITH AND	§	
JOCQUALINE SUSAN KEITH	§	
	§	
DEBTORS	§	CHAPTER 7
	§	
	§	
KAPITUS SERVICING, INC.,	§	
AS SERVICING AGENT FOR	§	
KAPITUS, LLC	§	
Plaintiff,	§	
	§	ADV.PROC.NO. 22-06003
VS.	§	
	§	
DONALD VINCENT KEITH	§	
Defendant.	§	

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ORAL DEPOSITION OF  
DAVID WOLFSON

JULY 6, 2023

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ORAL DEPOSITION OF DAVID WOLFSON, produced as a witness at the instance of the Employer and Carrier, and duly sworn, was taken in the above-styled and numbered cause on Thursday, July 6, 2023, from 9:36 a.m. to 2:38 p.m., before Janie Garcia, Notary in and for the State of Texas, reported by machine shorthand, appearing remotely, pursuant to the Federal Rules of Civil Procedure and any provisions stated on the record or attached hereto.

**CEN\*TEX REPORTING SERVICE**  
**512-672-8665**

**DAVID WOLFSON - July 06, 2023**

A P P E A R A N C E S

FOR THE PLAINTIFF:

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FOR THE DEFENDANT:

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Also Present:

Ms. Nicole Ratliff - nicole@dunnamlaw.com  
Ms. Tara E. Holterhaus - tholterhaus@spencerfane.com

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1 A. Are you talking about at the time he applied for  
2 financing, or after the default?

3 Q. I'm talking about the very, very first time that  
4 Mr. Keith was contacted or contacted anyone about  
5 obtaining some financing.

6 A. That came through Lendio.

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]

12 Those people either contact them or through  
13 their portal or any other way; that would be a Lendio  
14 issue. They may have a sale's team -- I don't -- that  
15 actively pursues cold-calling. I have no idea, that's  
16 their company.

17 They receive an application. They send it  
18 out to various finance companies, including us. This is  
19 primarily done online though different portals. And they  
20 usually act as the intermediary to pass through on  
21 request; so until the time of financing.

22 Q. And so my question was, how did -- how was any  
23 contact -- what was the first contact? Either with Mr.  
24 Keith in regard to the transaction we're here today  
25 discussing?

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1 was done, that is the best information I have. If there  
2 is an e-mail produced between him and Lendio that perhaps  
3 I didn't see the date because it's small, I didn't see  
4 anything unusual; then that might have an earlier date.

5 That would be in the documents. If you want  
6 me to look at and I'll identify if there's Kapitius on  
7 there anywhere. But anything between him and Lendio would  
8 have nothing to do with me or us, prior.

9 Q. Other than he never would've gotten financing  
10 with you had he not had communicates with Lendio. That  
11 does have to do with you, doesn't it?

12 MS. LALLY: Objection, argumentative.

13 A. Well, he could've applied somewhere else. He  
14 could've applied to us directly. So, you're really  
15 pulling for some sort questions I don't have. But  
16 specifically, in this matter, it came through Lendio.

17 Q. (Examination by Mr. Dunnam) Right --

18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 from Lendio.

24 Q. So, Mr. Keith never communicated directly with  
25 Kapitius prior to this being funded; is that right?

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1 A. I did not see any, no.

2 Q. Well, I didn't ask if you saw any. I want to  
3 know if there was any or not. You are Kapitus for today.

4 And I need to know if there's any  
5 communications between Kapitus and Mr. Keith prior to  
6 funding?

7 A. And I am telling you I do not see any in our  
8 records.

9 Q. So you don't know, it's the answer? Or you don't  
10 think there was any?

11 A. I don't think there was.

12 Q. Okay. And so anything that was said or done  
13 prior to funding, Kapitus is unaware if it's not shown in  
14 the document; is that fair?

15 A. Or their logs or electronic records, that is  
16 correct.

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 questions. If you -- show me the document then. I mean,  
23 I need to ask you questions.

24 And if you just -- if you're gonna spend the  
25 whole time saying, oh, you need to look at the documents;



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1 us when you want us to zoom on things and we'll do it, Mr.  
2 Wolfson, okay?

3 A. Yeah, if you could bring that up to 110 percent.  
4 I don't need reading glasses, but when it's from a screen  
5 it gets a little blurry.

6 Q. I can't read it either, so you don't need to  
7 apologize.

8 A. I'm 25 percent perfect.

9 Q. All right. So what is this document, Exhibit 6?

10 A. This is an application for funding, it's a Lendio  
11 application.

12 Q. Who filled this out?

13 A. So not being there, but I did look up what  
14 Lendio's website and how they operate. This is filled out  
15 by the applicant through Lendio's online portal.

16 Q. Do you know that for a fact, about that is was  
17 filled out by Mr. Keith?

18 A. I could not know that for a fact.

19 Q. Okay. So, you're just making assumption of how  
20 this document was generated; is that correct?

21 A. Uh, yes.

22 Q. And if we go down. So, the information on this  
23 document --

24 MR. DUNNAM: Go ahead and scroll down,  
25 Ms. Ratliff. I want to make sure Mr. Wolfson could see it

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1 Q. All right, number five. What's false about  
2 number five?

3 A. Because he clearly closed his business.

4 Q. You know why he closed?

5 A. He took our money and closed very quickly.

6 Q. Do you know why he closed?

7 A. He wanted to close.

8 Q. He wanted to close, that's your testimony?

9 A. I didn't ask him. Nobody --

10 MS. LALLY: -- objection, cause for  
11 speculation. He's not Mr. Keith.

12 A. Nobody got an answer from him.

13 Q. (Examination By Mr. Dunnam) What did he do with  
14 the money that y'all loaned him?

15 A. I don't --

16 MS. LALLY: -- objection, cause for  
17 speculation.

18 Q. (Examination By Mr. Dunnam) Do you know what he  
19 did with the money?

20 A. I just said I don't know.

21 Q. Does it matter what he did with the money?

22 A. It could.

23 Q. How?

24 A. Did he go on vacation?

25 Q. Did he go on vacation?

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1 A. I don't know.

2 MS. LALLY: Objection, cause for  
3 speculation.

4 Q. (Examination By Mr. Dunnam) You're sitting here  
5 today, you've sued this client, my client, for fraud  
6 stealing this money. And you don't know what he did with  
7 the money; is that what you're saying?

8 A. I personally do not know what he did with the  
9 money.

10 Q. Does Kapitus know what he did with the money?

11 A. I don't know.

12 Q. Who should I ask?

13 A. I do not know.

14 Q. Who should I ask at Kapitus, whether or not  
15 Kapitus knows what he did with the money.

16 A. I already answered, I don't know.

17 Q. Do you -- so let's go back. Does it matter to  
18 Kapitus what he used the money for?

19 A. It does.

20 Q. And what would be a proper use of the money?

21 A. The money is supposed to be used for a legitimate  
22 business purpose; for example buying equipment.

23 Q. What about paying off a supplier; is that a  
24 legitimate purpose? A supplier of materials for the  
25 business? Is that --

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1 Let's assume that, okay. And there's a company called  
2 Foxworth in central Texas. And they sell building  
3 materials, lumber, doors, things that are used to build  
4 houses. Okay?

5 Would his use of those funds to pay Foxworth,  
6 the building supply company, be an appropriate use of  
7 funds that were extended to a builder?

8 A. If it was for a building project he was working  
9 on, it would be.

10 Q. Okay. An operating capital, what is that? What  
11 does that mean?

12 A. That's a really broad definition of anything you  
13 need for operations of your business.

14 Q. Which would be paying ongoing obligations, that  
15 would be a proper use, that would be operating capital.  
16 That's what you use operating capital for, right?

17 A. Yeah.

18 Q. Either salaries or supplies or materials, or  
19 whatever you need to operate your business; that's a  
20 proper use of operating capital, correct?

21 A. It should be, yes.

22 Q. Okay. Do you know what the difference between a  
23 secured debt and unsecured debt is?

24 A. Yes.

25 Q. And we talked about the use of these funds that

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1 of what happened -- even without going into every little  
2 detail of a man's day-to-day life, would support being a  
3 fraudulent allegation.

4 Q. Okay. Well first off, I didn't say he planned to  
5 file bankruptcy. I asked you why would somebody pay an  
6 unsecured creditor if they were planning to file  
7 bankruptcy. So I just want to make sure the record is  
8 correct on that.

9 But do you know why? So, you think you --  
10 you per say, pay one couple weeks, stopped paying us. Do  
11 you know why he stopped paying you?

12 MS. LALLY: Objection, cause for  
13 speculation.

14 A. We don't know why exactly because when he  
15 contacted him, when there was a problem he ignored us.

16 Q. Well, you know now. This lawsuit has been going  
17 on for a while. Do you know why --

18 A. -- I'll tell you I do not know why.

19 Q. So sitting here today as a company  
20 representative, Kapitus does not know why he stopped  
21 paying y'all, right?

22 A. No, I don't know. I don't know why.

23 Q. Who should I ask?

24 A. I don't know. You've asked me this already.

25 Q. And so going back to your things that said

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1 A. So that was the default fee.

2 Q. And what's the default fee?

3 A. So the contract provides for a fee in the event  
4 of a default. The default fee it's listed there. It  
5 would be in the financing contract that we just reviewed.

6 There should be a list of fees in events of  
7 default in there. So on this one he's what we funded  
8 113,000. So he defaulted when the balance was balance was  
9 108,356. And because this event of default you kick in  
10 the 2,500 fee. That's how you come to the \$110,856.

11 Q. Well, you said you funded -- you just said you  
12 funded 113,000, but he only got 77,600 in his pocket.

13 A. You are correct, I'm misspeaking. So it's an  
14 80,000 funding which after the origination fee was 77,600.

15 So it's a factoring agreement, so there's a  
16 purch -- receivables purchased amount was what? 113,000.

17 Q. Uh, something like that.

18 A. If you play with so many numbers back, I mean,  
19 the contract, the documents are gonna have the exact  
20 details. So forgive me if we vary a little bit.

21 Q. Well, let's go back up.

22 A. No payments were made, so the balance at the time  
23 that whatever triggered the event of default is 108,356.

24 Q. And payments were due daily?

25 A. I -- what the contract called for.

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1 up another document. I'm gonna call this Exhibit 13. And  
2 I'm gonna see if you know what this is. I'm gonna ask Ms.  
3 Ratliff to scroll through this document.

4 A. Right. Can we enlarge it again, 125 seems to  
5 work. Thank you.

6 Q. Okay. What is Exhibit 13?

7 A. So this looks like e-mails. Could you go from  
8 Kapituf -- could you just scroll down so I can see the --  
9 where it's coming from.

10 Okay. These are e-mails that contain,  
11 what's this? Portals or drop boxes of different  
12 documents. I know what they are. I don't handle them  
13 myself. So, it's rare that I see.

14 Q. Okay. So when we look at this document, and  
15 let's scroll up a little bit. It talks about viewing the  
16 submission. Who has access to view that submission?

17 Does Mr. Keith? Or is it just Lendio that --  
18 let's just scroll up 'cause it has a couple of boxes that  
19 I assume you can click. Here's one that says log on to  
20 portal. It's involving Mr. Blake Brock. There was a view  
21 document button.

22 Mr. Keith's not on any of these. And so is  
23 it accurate that Mr. Keith has no access to log on to that  
24 portal reflected on Exhibit 3; or view the documents  
25 reflected on Exhibit 13?

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1 A. I don't see Mr. Keith on the e-mail chain.

2 Q. Right.

3 A. That's the only reason I have to agree with you.

4 Q. Okay.

5 A. This is through contract. And then again, I know  
6 what it is; I don't deal with that directly. And that is  
7 an answer for -- if you want to submit a request, I'll  
8 find out the exact detail on. But I don't see Mr. Keith  
9 on there.

10 So I would say it's highly unlikely. It  
11 looks like it's between -- I'll -- well, from cont -- I'm  
12 contract admin; that our internal people who process the  
13 application. And Villa is Jennaro Villa. So this looks  
14 like it's mainly between Kapitus and Lendio.

15 Q. Okay. Who is Jennaro Villa? He's at lendio?

16 A. No. Jennaro Villa is the sale's manager here at  
17 Kapitus. So, an ISO would have a point of contact here to  
18 deal with.

19 Q. Why is it that when you look at Team Villa you  
20 said that's to Lendio?

21 A. No, no, no. I said Team Villa is Jennaro Villa.  
22 I think I saw Lendio on another one of the e-mail chains.

23 Q. Let's go -- let's go down. Let's look at this  
24 Exhibit 13. Well, there's Ganesh Mohan?

25 A. Ganesh works at Kapitus.



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1 this was some kind of preferential payment to a friend, or  
2 brother, or on a debt that wasn't owed? Do you have any  
3 evidence of that?

4 A. I have no idea.

5 Q. You care?

6 A. Do I care?

7 Q. Yeah, do you care where he spent the money?

8 A. Yeah, I'd like to know where the money went.

9 Q. Okay. And have you ever asked anyone? He=y,  
10 what did he do with the money?

11 A. Yeah, I asked the lawyers who were involved in  
12 the case if they knew --

13 Q. -- did you see this check?

14 A. I'm seeing it now.

15 Q. Okay. And so, this is material document, you  
16 agree with me? In fact, it's a legitimate check. It's  
17 not a forgery or something.

18 The day he got the money from you he paid --  
19 what I represent to you to be was the supplier, a vendor,  
20 right? Tex Mix, I think that means mixed concrete, okay?  
21 I may be wrong.

22 But it's somebody like that, right? Concrete  
23 people. And paid them 25,000 of your \$77,600, okay. You  
24 got that?

25 A. Okay.

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1 Q. And assuming that's what he did with the funds;  
2 do you see anything sinister, inappropriate? You have any  
3 evidence that this was some kind of defrauding-you deal?

4 MS. LALLY: Objection, it assumes a lot  
5 of facts not evidence, and it cause for a legal  
6 conclusion.

7 A. Exactly, I have no idea.

8 Q. (Examination By Mr. Dunnam) Well, so that's my  
9 issue, Mr. Wolfson. You sued my client -- larceny, fraud,  
10 embezzlement. And you don't even know what he did with  
11 the money?

12 How is that reasonable? Do you just sue  
13 everybody that doesn't pay you?

14 A. No.

15 MS. LALLY: Objection, argumentative.

16 Q. (Examination By Mr. Dunnam) So, why didn't you  
17 -- why didn't you know until today, which is -- I don't  
18 years after you filed the lawsuit, what he even did with  
19 the money?

20 MS. LALLY: Objection, mischaracterizes  
21 his testimony.

22 Q. (Examination By Mr. Dunnam) Well, you didn't  
23 know what he did with the money until you saw this Exhibit  
24 No.21, right?

25 MS. LALLY: Objection it assumes a fact

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1 not in evidence.

2 Q. (Examination By Mr. Dunnam) Is that right, is  
3 that a correct statement?

4 A. Yes.

5 Q. So, why would you accuse someone of fraud,  
6 embezzlement, and larceny; not even knowing what they did  
7 with the money?

8 MS. LALLY: Objection, argumentative, it  
9 assumes a fact not in evidence and is also calling for  
10 legal conclusions.

11 Q. (Examination By Mr. Dunnam) You understand my  
12 question?

13 A. Yeah, I understand your question. This isn't a  
14 divorce proceeding. So, I'm not even gonna answer this  
15 one.

16 Q. Why aren't answer?

17 A. Ask me a question that is relevant to this.  
18 We're not on -- in front of the judge here.

19 Q. Well, we are. Because this process can be played  
20 to a judge or a jury. This has the same affect as if  
21 you're in front of judge or a jury.

22 Your oath is just as binding now as it would  
23 be in courtroom. Do you understand that? You understand  
24 that?

25 A. Listen, I don't know what's gonna happen in

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1 court. All I know is my oath's binding. I don't know and  
2 we'll move on with this.

3 Q. Well, I'm not moving on with it yet because do  
4 you agree that you, Kapitus, has sued my client for fraud,  
5 embezzlement, and larceny?

6 A. Yes, we do.

7 Q. And why did you sue my client making those  
8 allegations not even knowing what he had done with the  
9 funds?

10 A. Because as stated before several times, when you  
11 look at the circumstances under which this happened it is  
12 not unreasonable to infer that he committed all of those  
13 acts.

14 So, you can present a whole bunch of new  
15 stuff here now that came out discovery, was not available  
16 when the lawsuit was started.

17 Q. We all participated in the bankruptcy proceeding,  
18 right?

19 MS. LALLY: Objection. First of all, I  
20 don't think that he's noticed up for the bankruptcy  
21 proceeding in general. I don't know if he can testify to  
22 that at all. He might not know the answer.

23 Q. Did you participate -- did Kapitus participate in  
24 a bankruptcy proceeding?

25 A. I don't remember if someone from here did, or a

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1 But not even caring what the spend the funds  
2 for. And calling somebody guilty of larceny,  
3 embezzlement, and fraud; yeah, I've got a problem with  
4 that, Mr. Wolfson. Do you have a problem with that? Or  
5 do you think that's okay behavior?

6 MS. LALLY: Objection, you're badgering  
7 the witness, you're being argumentative.

8 A. Perhaps he should have taken our phone call and  
9 answered an e-mail, we wouldn't have to be here.

10 Q. (Examination By Mr. Dunnam) Okay. Well, let's  
11 go back to Exhibit No.21 real quick. I just want to show  
12 you something. We got to the bottom of that page, you'll  
13 see there's a document number, key000 number one, okay?

14 And the Exhibit No.22 is the number Keith  
15 five zeros and a two. And I'll represent to you that that  
16 would indicate that these are the first two documents we  
17 gave you in this case, potentially a year ago.

18 So, there's not -- I'm not trying to throw  
19 something at you, you know. I don't know why you haven't  
20 seen it, that ain't my problem. Let's look at Exhibit 23  
21 'cause we -- we want to talk about what did Foxworth do  
22 after they got 50 grand, okay? This is a pleading,  
23 Exhibit 23. And do you have it right or not? So, I'll  
24 represent --

25 A. -- larger would be better.

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1 Q. Okay.

2 A. Come on.

3 Q. But now that you know, assume what I showed you  
4 is accurate, what he did with the money; and you said  
5 earlier that if it was used to pay these vendors that  
6 would be proper use of operating capital. You still  
7 believe this gentlemen or his company committed  
8 embezzlement, larceny, and fraud?

9 MS. LALLY: Objection.

10 Q. (Examination By Mr. Dunnam) You still believe  
11 that?

12 A. Yeah.

13 MS. LALLY: Objection, it assumes facts  
14 not in evidence --

15 Q. -- you still believe that?

16 MS. LALLY: It cause for legal  
17 conclusion as to what embezzlement, larceny, and fraud  
18 are. And mischaracterizes and misstates private  
19 testimony.

20 Q. (Examination By Mr. Dunnam) You still think he's  
21 guilty of --

22 A. -- yes.

23 Q. And the only basis for that is he stopped paying  
24 real quick, checked out his business relatively soon, and  
25 filed bankruptcy couple months later. That's your basis

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1 for it all, right?

2 A. That's how I inferred it, yes.

3 Q. Okay. So this entire lawsuit is based on this  
4 inference; is that right?

5 MS. LALLY: Objection, cause for legal  
6 conclusion.

7 Q. (Examination By Mr. Dunnam) Your entire claims  
8 are based on that inference, it smells bad?

9 A. Does it?

10 MS. LALLY: Same objection.

11 Q. (Examination By Mr. Dunnam) Not when you know  
12 all the facts. But going back to my question. This  
13 entire lawsuit, all your claims are based on this  
14 inference you've made.

15 That Kapitus has made from the timing of when  
16 he stopped paying, when he went out of business, when he  
17 filed bankruptcy, and him not returning some phone calls?

18 A. And the documentation that was submitted, and the  
19 representations made when he applied for the funding.

20 Which you are arguing was not him. We're  
21 saying it was. And this will come out at trial, sir.

22 Q. I'm not saying this wasn't him. I'm asking you  
23 if you know who did it? That's all I'm asking.

24 A. And I answered that.

25 Q. Okay.

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1           IN THE UNITED STATES BANKRUPTCY COURT  
 2           FOR THE WESTERN DISTRICT OF TEXAS  
               WACO DIVISION

3   IN RE:                                 §     CASE NO. 22-60559  
   §  
 4   DONALD VINCENT KEITH AND         §  
   JOCQUALINE SUSAN KEITH           §  
 5   §  
   DEBTORS                             §     CHAPTER 7  
 6   §  
   §  
 7   KAPITUS SERVICING, INC.,         §  
   AS SERVICING AGENT FOR           §  
 8   KAPITUS, LLC                       §  
   Plaintiff,                         §  
 9   §     ADV.PROC.NO. 22-06003  
   VS.                                   §  
 10                                        §  
   DONALD VINCENT KEITH             §  
 11   Defendant.                         §

12   \_\_\_\_\_  
 13   ORAL DEPOSITION OF  
   DAVID WOLFSON

14   JULY 6, 2023  
 15   \_\_\_\_\_

16  
 17  
 18   I, Janie Garcia, Notary in and for the  
 19   State of Texas, hereby certify to the following:

20   That the witness, David Wolfson, was duly sworn  
 21   by the officer and that the transcript of the oral  
 22   deposition is a true record of the testimony given by the  
 23   witness;

24   That the original deposition was delivered to  
 25   Mr. Dunnam.



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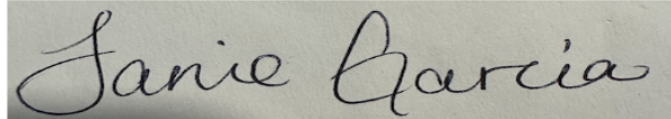
1 That pursuant to information given to the deposition  
2 officer at the time said testimony was taken, the  
3 following includes counsel for all parties of record:

4 Mr. Dunnam Attorney For Defendant

5 Ms. Lally Attorney For Plaintiffs

6  
7 I further certify that I am neither counsel for,  
8 related to, nor employed by any of the parties in the  
9 action in which this proceeding was taken, and further  
10 that I am not financially or otherwise interested in the  
11 outcome of the action.

12  
13 Certified to by me this 17th day of July 2023.

14 

15 Janie Garcia  
16 Notary Public in and for  
17 The State of Texas  
18 Commission Expires: 08-17-25  
19 Firm Registration No.50  
20 Cen-Tex Reporting Service  
21 13809 Research Boulevard, Suite 500  
22 Austin, TX 78750  
23 (512) 672-8665  
24  
25

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